HOUSE BILL NO. 466

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE GARA, Berkowitz, Cissna, Crawford, Croft, Gruenberg, Guttenberg, Joule, Kapsner, Kerttula, Salmon

Introduced: 2/13/06
Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

"An Act levying a net profits tax on the production of oil, authorizing a tax credit for qualifying exploration costs associated with the exploration for and development of oil and for certain related qualifying losses, and repealing the currently levied properties production (severance) tax as it applies to oil; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 43.55.013(j) is amended to read:

(j) The department may aggregate two or more leases or properties**<u>, or portions of them</u>** [(OR PORTIONS OF THEM)], for purposes of determining economic limit factors under this section and applying them to [AS 43.55.011 OR] AS 43.55.016, when economically interdependent [OIL OR GAS] production operations are not confined to a single lease or property. The department may also segregate a lease or property into two or more parts, for purposes of determining economic limit factors under this section and applying them under [AS 43.55.011 OR] AS 43.55.016, when two or more economically independent [OIL OR GAS] production operations are being conducted on it [, OR WHEN OLD CRUDE OIL IS PRODUCED FROM THE SAME LEASE OR PROPERTY AS OTHER OIL].

*** Sec. 2.** AS 43.55.020(a) is amended to read:

(a) The production tax on [OIL OR] gas shall be paid monthly. The tax is due on the 20th day of each calendar month on [OIL OR] gas produced from each lease or property during the preceding month. If the tax is not paid before the end of the month in which it becomes due, the tax becomes delinquent.

*** Sec. 3.** AS 43.55.020(b) is amended to read:

(b) The production tax on [OIL OR] gas shall be paid by or on behalf of the producer.

*** Sec. 4.** AS 43.55.020(d) is amended to read:

(d) In making settlement with the royalty owner the producer may deduct the amount of the tax paid on royalty [OIL OR] gas, or may deduct royalty [OIL OR] gas equivalent in value at the time the tax becomes due to the amount of the tax paid.

*** Sec. 5.** AS 43.55.020(e) is amended to read:

(e) Gas produced in excess of that needed for safety purposes, except gas used in the operation of a lease or property in drilling for or producing oil or gas, or for repressuring, is considered, for the purpose of <u>**this chapter**</u> [AS 43.55.011 - 43.55.150] and in the amount used, as gas produced from a lease or property. Gas flared beyond the amount authorized for safety by the Alaska Oil and Gas Conservation Commission under AS 31.05 is considered as gas produced, except that it is subject to a penalty equal to the tax computed under AS 43.55.016 per 1,000 cubic feet of gas for the month in which the gas was flared.

*** Sec. 6.** AS 43.55.020(f) is amended to read:

(f) If<u>**, under this chapter,**</u> oil or gas is sold under circumstances where the sale price does not represent the prevailing value for oil or gas of like kind, character, or quality in the field or area from which the product is produced, the department may require the tax to be paid upon the basis of the value of oil or gas of the same kind, quality, and character prevailing during the calendar month of production for that field or area.

*** Sec. 7.** AS 43.55.025(a) is amended to read:

(a) Subject to the terms and conditions of this section, on [OIL AND] gas produced on or after July 1, 2004, from an oil and gas lease, or on gas produced from a gas only lease, a credit against the production tax due under this chapter is allowed for exploration expenditures that qualify under (b) of this section in an amount equal to one of the following:

(1) 20 percent of the total exploration expenditures that qualify only under (b) and (c) of this section;

(2) 20 percent of the total exploration expenditures for work performed before July 1, 2007, and that qualify only under (b) and (d) of this section;

(3) 40 percent of the total exploration expenditures that qualify under (b), (c), and (d) of this section; or

(4) 40 percent of the total exploration expenditures that qualify only under (b) and (e) of this section.

*** Sec. 8.** AS 43.55.025(b) is amended to read:

(b) To qualify for the production tax credit under (a) of this section, an exploration expenditure must be incurred for work performed on or after July 1, 2003, and before July 1, 2007, except that an exploration expenditure for a Cook Inlet prospect must be incurred for work performed on or after July 1, 2005, and before July 1, 2010, and except that an exploration expenditure, in whole or in part, south of 68 degrees, 15 minutes, North latitude, and not part of a Cook Inlet prospect must be incurred for work performed on or after July 1, 2003, and before July 1, 2010, and

(1) may be for seismic or geophysical exploration costs not connected with a specific well;

(2) if for an exploration well,

(A) must be incurred by an explorer that holds an interest in the exploration well for which the production tax credit is claimed;

(B) may be for either <u>**a**</u> [AN OIL OR] gas discovery well or a dry hole; and

(C) must be for goods, services, or rentals of personal property reasonably required for the surface preparation, drilling, casing, cementing, and logging of an exploration well, and, in the case of a dry hole, for the expenses required for abandonment if the well is abandoned within 18 months after the date the well was spudded;

(3) may not be for testing, stimulation, or completion costs; administration, supervision, engineering, or lease operating costs; geological or management costs; community relations or environmental costs; bonuses, taxes, or other payments to governments related to the well; or other costs that are generally recognized as indirect costs or financing costs; and

(4) may not be incurred for an exploration well or seismic exploration that is included in a plan of exploration or a plan of development for any unit on May 13, 2003.

*** Sec. 9.** AS 43.55.025(c) is amended to read:

(c) To be eligible for the 20 percent production tax credit authorized by (a)(1) of this section or the 40 percent production tax credit authorized by (a)(3) of this section, exploration expenditures must

(1) qualify under (b) of this section; and

(2) be for an exploration well, subject to the following:

(A) for an exploration well other than a well that is described in (B) of this paragraph, the well must be located and drilled in such a manner that the bottom hole is located not less than three miles away from the bottom hole of a preexisting suspended, completed, or abandoned [OIL OR] gas well; in this subparagraph, "preexisting" means a well that was spudded more than 150 days but less than 35 years before the exploration well was spudded;

(B) for an exploration well that explores a Cook Inlet prospect, the well must be located at least three miles from any other well drilled for [OIL AND] gas with all distances measured as the horizontal distance between exploration targets, except that the exploration well that is located within three miles of a well drilled for [OIL AND] gas qualifies for the tax credit authorized by this subsection if the exploration well tests potential hydrocarbon traps that the commissioner of natural resources determines, after analyzing evidence submitted by the explorer and from other information that the commissioner of natural resources determines relevant, constitute a distinctly separate exploration target.

*** Sec. 10.** AS 43.55.025(f) is amended to read:

(f) For a production tax credit under this section,

(1) an explorer shall, in a form prescribed by the department and within six months of the completion of the exploration activity, claim the credit and submit information sufficient to demonstrate to the department's satisfaction that the claimed exploration expenditures qualify under this section;

(2) an explorer shall agree, in writing,

(A) to notify the Department of Natural Resources, within 30 days after completion of seismic or geophysical data processing, completion of a well, or filing of a claim for credit, whichever is the latest, for which exploration costs are claimed, of the date of completion and submit a report to that department describing the processing sequence and providing a list of data sets available; if, under (c)(2)(B) of this section, an explorer submits a claim for a credit for expenditures for an exploration well that is located within three miles of a well already drilled for [OIL AND] gas, in addition to the submissions required under (1) of this subsection, the explorer shall submit the information necessary for the commissioner of natural resources to evaluate the validity of the explorer's claim that the well is directed at a distinctly separate exploration target, and the commissioner of natural resources shall, upon receipt of all evidence sufficient for the commissioner to evaluate the explorer's claim, make that determination within 60 days;

(B) to provide to the Department of Natural Resources, within 30 days after the date of a request, specific data sets, ancillary data, and reports identified in (A) of this paragraph;

(C) that, notwithstanding any provision of AS 38, information provided under this paragraph will be held confidential by the Department of Natural Resources for 10 years following the completion date, at which time that department will release the information after 30 days' public notice;

(3) if more than one explorer holds an interest in a well or seismic exploration, each explorer may claim an amount of credit that is proportional to the

explorer's cost incurred;

(4) the department may exercise the full extent of its powers as though the explorer were a taxpayer under this title, in order to verify that the claimed expenditures are qualified exploration expenditures under this section; and

(5) if the department is satisfied that the explorer's claimed expenditures are qualified under this section, the department shall issue to the explorer a production tax credit certificate for the amount of credit to be allowed against production taxes due under this chapter; however, notwithstanding any other provision of this section, the department may not issue to an explorer a production tax credit certificate if the total of production tax credits submitted for Cook Inlet production, based on exploration expenditures for work performed during the period described in (b) of this section for that production, that have been approved by the department exceeds $20,000,000.

*** Sec. 11.** AS 43.55.025(k)(1) is amended to read:

(1) "Cook Inlet production" means [OIL OR] gas production from the Cook Inlet sedimentary basin, as that term is defined by regulation adopted to implement AS 38.05.180(f)(4);

*** Sec. 12.** AS 43.55.025(k)(3) is amended to read:

(3) "explorer" means a person who, in exploring for new [OIL OR] gas reserves, incurs expenditures.

*** Sec. 13.** AS 43.55.080 is amended to read:

Sec. 43.55.080. Collection and deposit of revenue. The department shall deposit in the general fund the money collected by it under **<u>AS 43.55.013 - 43.55.150 and AS 43.55.400 - 43.55.420</u>** [AS 43.55.011 - 43.55.150].

*** Sec. 14.** AS 43.55.135 is amended to read:

Sec. 43.55.135. Measurement. For the purposes of **<u>this chapter</u>** [AS 43.55.011 - 43.55.150], oil shall be measured in terms of a "barrel of oil" and gas shall be measured in terms of a "cubic foot of gas."

*** Sec. 15.** AS 43.55.150(a) is amended to read:

(a) For the purposes of **<u>this chapter</u>** [AS 43.55.011 - 43.55.150], the gross value shall be calculated using the reasonable costs of transportation of the oil or gas.

The reasonable costs of transportation shall be the actual costs, except

(1) when the parties to the transportation of oil or gas are affiliated;

(2) when the contract for the transportation of oil or gas is not an arm's length transaction or is not representative of the market value of that transportation;

(3) when the method of transportation of oil or gas is not reasonable in view of existing alternative methods of transportation.

*** Sec. 16.** AS 43.55.201(b) is amended to read:

(b) The surcharge imposed by (a) of this section

(1) is in addition to [AND SHALL BE PAID IN THE SAME MANNER AS] the tax imposed by **AS 43.55.400 - 43.55.420** [AS 43.55.011 - 43.55.150;] and is in addition to the surcharge imposed by AS 43.55.300 - 43.55.310**; and**

(2) shall be paid in the same manner as the tax imposed by AS 43.55.400 - 43.55.420.

*** Sec. 17.** AS 43.55.201(c) is amended to read:

(c) A producer of oil shall make reports of production in the same manner and under the same penalties as required under **AS 43.55.020 - 43.55.150 and AS 43.55.400 - 43.55.420** [AS 43.55.011 - 43.55.150].

*** Sec. 18.** AS 43.55.300(b) is amended to read:

(b) The surcharge imposed by (a) of this section

(1) is in addition to [AND SHALL BE PAID IN THE SAME MANNER AS] the tax imposed by **AS 43.55.400 - 43.55.420** [AS 43.55.011 - 43.55.150;] and is in addition to the surcharge imposed by AS 43.55.201 - 43.55.231**; and**

(2) shall be paid in the same manner as the tax imposed by AS 43.55.400 - 43.55.420.

*** Sec. 19.** AS 43.55.300(c) is amended to read:

(c) A producer of oil shall make reports of production in the same manner and under the same penalties as required under **AS 43.55.020 - 43.55.150 and AS 43.55.400 - 43.55.420** [AS 43.55.011 - 43.55.150].

*** Sec. 20.** AS 43.55 is amended by adding new sections to read:

Article 3A. Production Profits Sharing Tax.

Sec. 43.55.400. Production profits sharing tax. (a) There is levied on the producer of oil a tax for all oil from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation.

(b) The tax levied under this section is equal to 30 percent of the gross production revenues of the oil produced, based on the gross value of the oil at the point of production, net of royalties paid on the oil production under AS 38.05, and less the taxpayer's

(1) lease expenses; and

(2) capital expenses related to the lease.

(c) For purposes of computation of payment of the tax under this section, a deduction for pipeline expenses is not allowed.

(d) Tax is not due under this section on the first 1,000 barrels of daily production from the lease or property.

Sec. 43.55.410. Payment of tax. A taxpayer shall pay the tax due under AS 43.55.400 quarterly. The tax is due on the 20th day of each calendar month on oil produced from each lease or property subject to the tax levied by AS 43.55.400 during the preceding calendar quarter. If the tax is not paid before the end of the month in which it becomes due, the tax becomes delinquent. For purposes of this section, "calendar quarter" means each of the three-month periods ending March 31, June 30, September 30, and December 31.

Sec. 43.55.420. Tax credit for new investments. (a) Subject to the terms and conditions of this section, on oil subject to tax under AS 43.55.400 produced on or after the effective date of this Act, from a lease or property, a credit against the production tax due under AS 43.55.400 is allowed for

(1) the total exploration expenditures that qualify under (c) of this section; and

(2) the taxpayer's losses incurred for exploration activities on a lease or property calculated by multiplying the value of the loss by the tax rate set out in AS 43.55.400(b).

(b) The tax credit authorized under this section may not exceed one-half of the taxpayer's tax liability under AS 43.55.400.

(c) To qualify for the tax credit under (a) of this section, an exploration expenditure

(1) must be incurred

(A) for seismic or geophysical exploration costs that are incurred generally and that are not connected with a specific well;

(B) if for an exploration well,

(i) by a taxpayer that holds an interest in the exploration well for which the production tax credit is claimed;

(ii) for either a discovery well or a dry hole; and

(iii) for goods, services, or rentals of personal property reasonably required for the surface preparation, drilling, casing, cementing, and logging of an exploration well, and, in the case of a dry hole, for the expenses required for abandonment if the well is abandoned within 18 months after the date the well was spudded; and

(2) may not be incurred for testing, stimulation, or completion costs; administration, supervision, engineering, or lease operating costs; geological or management costs; community relations or environmental costs; bonuses, taxes, or other payments to governments related to the well; or other costs that are generally recognized as indirect costs or financing costs.

(d) To claim and obtain a tax credit under this section,

(1) a taxpayer shall, in a form prescribed by the department and within six months of the completion of the exploration activity, claim the credit and submit information sufficient to demonstrate to the department's satisfaction that the claimed exploration expenditures qualify under this section;

(2) a taxpayer shall agree, in writing,

(A) to notify the Department of Natural Resources, within 30 days after completion of seismic or geophysical data processing, completion of a well, or filing of a claim for credit, whichever is the latest, for which exploration costs are claimed, of the date of completion, and submit a report to that department describing the processing sequence and providing a list of data sets available; the commissioner of natural resources shall, on receipt of all evidence sufficient for the commissioner to evaluate the taxpayer's claim, make that determination within 60 days; and

(B) to provide to the Department of Natural Resources, within 30 days after the date of a request, specific data sets, ancillary data, and reports identified in (A) of this paragraph; notwithstanding any provision of AS 38 to the contrary, the Department of Natural Resources shall hold confidential for 10 years following the completion date information provided under this subparagraph, at which time that department shall release the information after 30 days' public notice;

(3) if more than one taxpayer who incurs expenses in exploring for new oil reserves holds an interest in a well or seismic exploration, each taxpayer may claim an amount of credit that is proportional to the taxpayer's cost incurred;

(4) the department may exercise the full extent of its powers to verify that the claimed expenditures are qualified exploration expenditures under this section; and

(5) if the department is satisfied that the taxpayer's claimed expenditures are qualified under this section, the department shall issue to the taxpayer a tax credit certificate for the amount of credit to be allowed against taxes due under AS 43.55.400.

(e) Except as limited by (f) of this section, a taxpayer may transfer, convey, or sell its tax credit certificate to any person, and any person who receives a tax credit certificate may also transfer, convey, or sell the certificate.

(f) A taxpayer may not purchase or take receipt of a tax credit certificate under this section unless the taxpayer provides evidence to the commissioner of exploration activities that qualify under (c) of this section undertaken by the taxpayer or by an agent of the taxpayer within the three years immediately preceding acquisition of the tax credit certificate. A tax credit certificate obtained in violation of this section is void.

(g) A taxpayer that purchases a tax credit certificate may apply the credits against its tax liability under AS 43.55.400. Regardless of the price the taxpayer paid for the certificate, the taxpayer may receive a credit against its tax liability under AS 43.55.400 for the full amount of the credit, but for not more than the amount for which the certificate is issued. A tax credit allowed under this section may not be applied more than once.

(h) For a tax credit under this section,

(1) the amount of the credit that may be applied against the production tax for each calendar quarter may not exceed the total tax liability of the taxpayer applying the credit for the same period; and

(2) an amount of the tax credit that is greater than the total tax liability of the taxpayer applying the credit for a calendar quarter may be carried forward and applied against the taxpayer's tax liability under AS 43.55.400 in one or more immediately following calendar quarters.

(i) Notwithstanding any other provision of this title, of AS 31.05, or of AS 40.25.100, the department shall provide to the Department of Natural Resources information submitted with a claim under this section to support the eligibility of an exploration expenditure, including seismic exploration data and well data, and any information described in (f)(2) of this section received by the department.

*** Sec. 21.** AS 43.82.210(a) is amended to read:

(a) If the commissioner approves an application and proposed project plan under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a contract under AS 43.82.020 for periodic payment in lieu of one or more of the following taxes that otherwise would be imposed by the state or a municipality on the qualified sponsor or member of a qualified sponsor group as a consequence of participating in an approved qualified project:

(1) [OIL AND] gas production taxes<u>**, the net profits tax on oil, and the**</u> oil surcharges under AS 43.55;

(2) oil and gas exploration, production, and pipeline transportation property taxes under AS 43.56;

(3) [REPEALED

(4)] Alaska net income tax under AS 43.20;

<u>**(4)**</u> [(5)] municipal sales and use tax under AS 29.45.650 - 29.45.710;

<u>**(5)**</u> [(6)] municipal property tax under AS 29.45.010 - 29.45.250 or 29.45.550 - 29.45.600;

<u>**(6)**</u> [(7)] municipal special assessments under AS 29.46;

<u>**(7)**</u> [(8)] a comparable tax or levy imposed by the state or a municipality after June 18, 1998;

<u>**(8)**</u> [(9)] other state or municipal taxes or categories of taxes identified by the commissioner.

*** Sec. 22.** AS 43.55.011, 43.55.012, 43.55.013(b), 43.55.013(d), and 43.55.900(12) are repealed.

*** Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITIONAL PROVISION FOR EXPIRING OIL PRODUCTION TAX CREDIT. Notwithstanding the amendments to AS 43.55.025 made by secs. 7 - 12 of this Act limiting application of the production tax credit under that section to gas, a taxpayer who, on January 1, 2006, holds production credits for oil that are subject to the carry-forward provision of AS 43.55.025(i), may apply the unused amounts of those credits against the net profits tax on oil due under AS 43.55.400.

*** Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVE APPLICATION. This Act is retroactive to January 1, 2006, and applies to oil produced after December 31, 2005, that is subject to the properties production tax on oil under AS 43.55.

*** Sec. 25.** This Act takes effect immediately under AS 01.10.070(c).